Supreme Court, U.S.
FILED

MAR 1 - 2010

OFFICE OF THE CLERK

No. 091070

In The

Supreme Court of the United States

Gary Van Hardy and

Susan Barbara Hardy - Petitioner

vs.

Michigan Department of Treasury

a.k.a.

MICHIGAN DEPARTMENT OF TREASURY-

Respondent

On Petition for a Writ of Certiorari to

United State Court of Appeals for the Sixth Circuit

Petition for Writ of Certiorari

Gary Van Hardy and Susan Barbara Hardy

1399 Braidwood (48041)

Memphis Michigan

Questions Presented

1. Did the lower courts violate Petitioners contract rights when they pursued Petitioners action under 28 USC §1331 despite the fact that petitioners filled their action under 28 USC §1330 of the Foreign Sovereign Immunities Act?
2. Did the court of appeals error when the court refused to issue a mandamus to the district court based upon the fact that Petitioners refused to file an appeal based upon 28 USC §1331?
3. Did the lower courts error when they failed to properly address the statutes as presented and totally ignored 28 USC §1605(a)(4), a critical part of the argument under the Foreign Sovereign Immunities Act?

4. Did the district court error when the court failed to enter default judgment when Defendant failed to answer under the time restraints posed under 28 USC §1608 in Petitioners original complaint?
5. Did the lower courts error when they denied due process under the Fifth amendment to the Constitution of United States?
6. Did the lower courts error when they totally ignored the First amendment argument to the Constitution of United States?

List of Parties

All parties appear in the caption of the case on the cover page.

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In the Supreme Court of the United States

Petition for Writ of Certiorari

Petitioner respectfully requests that a writ of certiorari issue to review the judgment below.

Opinions Below

1. The opinions of the United States court of appeals appears at Appendix A and C to the petition and is unpublished.

2. The opinions of the United States district court appears at Appendix B and are not published.

Jurisdiction

The date on which the United States Court of Appeals decided our case by dismissal was October 22, 2009.

A timely petition for rehearing was denied by the United State Court of Appeals on the following date: January 05, 2010, and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Article III, section 2, clause 1 and 2 of the Constitution of the United States.

Constitutional and Statutory provisions involved

1. Article I, section 10, clause 1 of the Constitution of the United States; No State shall. . . . . .pass any . . .. Law impairing the obligation of contracts. . .

2. Article III, section 1, clause 1 of the Constitution of the United States; The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

3. Article IV, section 3, clause 1 of the Constitution of the United States ordains; New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as the Congress.

4. Article IV, section 3, clause 2 of the Constitution of the United States ordains: The Congress shall have power to dispose of and make all needful Rules and regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be construed as
to Prejudice any Claims of the United States, or of any particular State.

5. The first amendment to the Constitution of the United States at article 1 clause 1 ordains: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

6. The Foreign Sovereign Immunities Act of 1976 as amended (FSIA), 28 U.S.C. § 1330, 1602, §1603, §1604, § 1605, §1606, § 1607, § 1608, § 1609, § 1610, §1611, as amended.

Statement of the Case

1. Gary Van and Susan Barbara Hardy, hereinafter Petitioners believe, and as far as Petitioners have been able to discover, this instant case is a case of first impression.
2. Petitioners, on or about August 2002, filed the necessary documents and affidavits to remove themselves from all nexus with the Social Security Administration. Petitioners made moot the

presumption of a gift subscription or debt acknowledgement. See Appendix F. Further;

3. Plaintiffs are merchants and traders at law on a cash basis and citizens of the incorporated State of Michigan. For document of incorporation establishment see Appendix E. Further;
4. On or about March 06, 2009 MICHIGAN DEPARTMENT OF TREASURY, hereinafter Defendant, posted documents to Petitioners location, in the form of claims and threats against Petitioners, their home and property, demanding payment, not of money but private debt and credit. Further;
5. On or about March 10, 2009 Gary Van and Susan Barbara Hardy responded to the Defendant's claims by mailing first class the document

Affidavit which is Appendix F. Note, Defendants continued with their aggressive collection activities through out 2009. Further;

6. On or about March 2009 Petitioners using Michigan's Public Act 442 and 5 U.S.C. § 552 to demand certain documents from the Defendant, Michigan Secretary of State and the Archives of Michigan. Further;

7. Defendant, the Secretary of State and the Archives of Michigan could not produce evidence of the following documents:

a. The document of evidence of establishment, in the following exact spelling, case usage, and word orientation the entity: Michigan Department of Treasury, Income Tax section.

b. The document of evidence of establishment, in the following exact spelling, case usage, and word orientation the entity: STATE OF MICHIGAN.

c. The original conveyance that spells out the terms and conditions of a charitable gift subscription or debt acknowledgement that was signed by Gary Van Hardy and or Susan Barbara Hardy that conveyed to the Michigan Department of Treasury or to whoever/whatever Michigan Department of Treasury acts as agent for or to public policy, that created a liability.

d. The original contract that spells out the term and conditions that Gary Van Hardy and or Susan Barbara Hardy agreed to discharge a debt.

e. Any and all contract(s) in any form that spells out the terms and conditions, Gary Van Hardy and or Susan Barbara Hardy has entered into with the Michigan Department of Treasury or whosoever /whatsoever the Michigan Department of Treasury acts as agents for, and having upon its face the signature of Gary Van Hardy and or Susan

Barbara Hardy.

f. The document of evidence of establishment/incorporation/registration/ creation/certification, or by any other description the establishment of, and the authority/license to operate or do business in the incorporated State of Michigan in the following exact spelling, case usage, and word orientation the entity: Michigan Department of Treasury.

g. The document of evidence of establishment /incorporation/registration/ creation/certification, or by any other description the establishment of, and the authority/license to operate or do business in the STATE OF MICHIGAN in the following exact spelling, case usage, and word orientation the entity: Michigan Department of Treasury.

h. The document of evidence of establishment /incorporation/registration/creation/certification, or

by any other description the establishment of, and the authority/license to operate or do business in the incorporated State of Michigan in the following exact spelling, case usage, and word orientation the entity: MICHIGAN DEPARTMENT OF TREASURY.

i. The document of evidence of establishment /incorporation/registration/ creation/certification, or by any other description the establishment of, and the authority/license to operate or do business in the STATE OF MICHIGAN in the following exact spelling, case usage, and word orientation the entity: MICHIGAN DEPARTMENT OF TREASURY.

8. Petitioners can locate no document establishing or creation, in the exact spelling, case usage and word orientation, the entities: STATE OF MICHIGAN or MICHIGAN DEPARTMENT OF TREASURY, except

where they appear on a credit report as companies engage in commercial activity. Further;

9. Petitioners argue and assert STATE OF MICHIGAN and MICHIGAN DEPARTMENT OF TREASURY a.k.a. Michigan Department of Treasury are unincorporated foreign states with no authority to operate or do business in the incorporated State of Michigan. See Paragraph 7. a., b., f., g., h., and i. above. Further

10. Petitioners, because of the above, on May 11, 2009, filed complaint 09-11799, actually paying the 350 Dollar filing fee in legal tender of the United States, under the Foreign Sovereign Immunity Act (FSIA) Title 28 U.S.C. § 1602 – 1611 and 28 U.S.C. 1330 naming Michigan Department of Treasury a.k.a. MICHIGAN DEPARTMENT OF TREASURY as a foreign state and defendant. Further;

11. Defendant signs for and receives service of suit on May 14, 2009. Further;

12. Petitioners complain the following:

a. Defendant interfered with Plaintiffs contract rights by opening an account in the names of the Plaintiffs.

b. Defendant misrepresents themselves as the incorporated State of Michigan

c. Defendant continues an abusive process while lacking a debt res to sustain jurisdiction.

d. Defendant uses deceit acting as the incorporated State of Michigan to induce Plaintiffs to perform to the unincorporated STATE OF MICHIGAN.

13. On June 01, 2009 Judge Borman in the district court orders Plaintiffs to "Show Cause" why the court enjoys proper subject matter jurisdiction within 15 days. Further;

14. Plaintiffs respond to "Show Cause Order" with a

16 page document the court receives and signs for on June 12, 2009, well within the 15 day ordered to answer. Further;

15. It should be noted at this time that Defendant did not and has not at any time in this instant case served an answer or other responsive pleading. Further;

16. On 07/17/09 DISTRICT COURT files ORDER OF DISMISSAL in re. 09-11799, citing lack of subject matter jurisdiction and untimely filing of answer to show cause. See appendix B. Further;

17. Petitioners believe the district court order is a violation of Amendment I of the Constitution of the United States, as Petitioners choose not to be members of a sect based upon a belief in something that does not exist but only in the mind of those believers. See Appendix D. Further;

18. Petitioners believe the Defendant and the lower

courts orders, in disregard of the fifth Amendment of the Constitution of the United States, made an illegal conversion of Petitioners property by converting Petitioners contract rights from 28 USC § 1330 to 28 USC § 1331 without just compensation. See Appendix D for Article I, section 10 as to contract rights and U.S. Const. amend. V for just compensation. Further;

19. The Defendant and the lower courts (UNITED STATES COURT OF APPEALS FOR THE SIXTH DISTRICT and UNITED STATED DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN) enter into the incorporated State of Michigan to execute the illegal conversion of property. Further

20. On July 24, 2009 Petitioners ask Chief Judge Rosen (district court)to correct errors of district court Judge Borman. Chief Judge Rosen declines

On July 30, 2009 to intercede in the matter. Further;

21. On August 20, 2009 Petitioners file, actually paying the fee of 450 Dollars cash in legal tender of the United States, a complaint(09-2064) in the form of Mandamus, citing FRAP 21, 6 Cir. I.O.P.21, which was filed and docketed on August 20, 2009 in the United States Court of Appeals for the Sixth Circuit. Further;

22. Petitioners respectfully demanded that United States Court of Appeals for the Sixth Circuit cause the lower court to:

a. Complainants, Gary Van and Susan Barbara Hardy, ask this court for protection in the form of an emergency stay of proceedings against the original Defendants in the matter of 09-11799, as these foreigners are at war with us, terrorizing us, invading our territory, threatening our lives, liberty, property, and the pursuit of happiness. Further;

b. review the briefs and filings of the Plaintiffs in the matter of 09-11799 and

c. order Judge Paul D. Borman to take jurisdiction over the original complaint and

d. administrate according to the Federal Rules of Civil Procedure, Rule 55 (a) (b) (2), namely to enter and so order the Defendants default into the record, further

e. that judge Paul D. Borman issue an order in favor of the Plaintiffs and against the Defendant pursuant to the Defendants default in the matter of 09-11799, further

f. order the lower court to produce and publish a written statement of facts and conclusions of law in the matter of 09-11799.

23. Petitioners also filed with the Writ a memorandum of law in support of the Writ of Mandamus. Further;

24. The UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT denied the Writ on October 22, 2009. See Appendix A. Further;

25. On or about November 04, 2009 Petitioners petitioned for rehearing in a true court of the

United States, the United States Court of Appeals for the Sixth Circuit. Further;

26. On or about November 30, 2010 Petitioners filed Motion for Injunctive Relief and a Motion for Default Relief. Further;

27. On January 05, 2009 petition for rehearing was denied by UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT for lack of subject matter jurisdiction, and the motion for default relief is DENIED AS MOOT, no mention of the motion for injunctive relief in the true circuit court of the United States for the sixth circuit. See Appendix C. Further;

28. On or about January 15, 2010 Petitioners mailed a Petition for hearing en banc in the United States Court of Appeals for the sixth circuit, which was received and signed for by the court January 16, 2010. Further;

29. On January 21, 2010 the UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, by Beverly L. Harris, En Banc Coordinator, denied filing the Petitioners Petition for hearing En Banc. Further;

30. Petitioners believe the orders of the UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ratify the DISTRICT COURTS illegal conversion of Petitioners contract rights. Further;

31. Petitioners add the further following reasons this Court should issue the Writ of Certiorari:

32. Petitioners assert and believe the above named lower courts ignore:

a. "To destroy a validly acquired right is the taking of property", *Osborn v. Nicholson,* 13 Wall. 654, 662. Further

b. "The right to contract is a property right by both the State and Federal Constitutions", *Coppage v. Kansas,* 236 US 1, 236. (ovrld on other grounds) *Phelps Dodge, Corp v. NLRB* 313 US 177.

Further

33. Petitioners assert the unincorporated companies doing business as the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN and the UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT has repeatedly interfered with and obstructs Petitioners access to the courts of Article III section 1, of the Constitution of the United States (Article III courts) that Congress has designated as having jurisdiction to hear cases involving foreign states. See Appendix D. Further;

a. Petitioners assert the above noted UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN and the UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT do not have authority to

interfere with Petitioners access to Article III courts, Further;

34. The Petitioners assert the lower courts have issued orders which ignore; ..."doctrine does not bar action for lack of subject matter jurisdiction but for failure to state claim on which relief can be granted". *Siderman de Blake v. Republic of Argentina,* C.A. 9 (Cal.) 1992. 965 F.2d. 699, certiorari denied 113 S. ct 1812,123 L.Ed. 2d 444. It should be noted that no claim of "Act of state Doctrine" or claim of sovereign immunity has been filed into the record of this instant case. Further;

35. Petitioners state in accord with footnote 9 contained in *Siderman de Blake v. Republic of Argentina,* C.A. 9 (Cal.) 1992. 965 F.2d. 699, certiorari denied 113 S. ct 1812,123 L. Ed. 2d 444. It could be read; Thus even if the Hardys had presented nothing more than the allegations in their complaint Meadows (*Meadows v. Dominican Republic,* 817 F 2d 517, 522-23 (9th Cir) cert. denied 484 U.S. 976; 108 S. Ct. 486, 487; 98 L. Ed 2d 485 (1987).) indicated that it would have been incumbent upon MICHIGAN DEPARTMENT OF

TREASURY to respond to those allegations. Further;

36. Petitioners assert it should be further noticed that Respondent judge in the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, hereinafter Respondent, ref. 09-11799, dismissed Petitioner's complaint for lack of subject matter jurisdiction. Further;

a. Petitioners assert the above noted Respondent does not enjoy authority to dismiss case 09-11799 brought under 28 USC § 1330, 1602 et. al. by citing lack of subject matter jurisdiction. Further;

37. Petitioners assert that it was made clear in the original complaint in this instant matter at paragraph 28 and in the amended complaint at paragraph 24 with the attendant exhibits H and H-1 the **private nature of the commercial activity** of the defendant as it attempts to collect not money but private debt and credit as established in those MICHIGAN DEPARTMENT OF TREASURY documents which cite the private, not enacted, law of MCL 206.301. Further it should be noted original Defendant enters the

incorporated State of Michigan in its private collection activities. See Appendix E for document of incorporation of State of Michigan. Further;

a. Petitioners assert lower courts ignore; "For the most part, this chapter (1604) codifies, as a matter of federal law, the restrictive theory of foreign sovereign immunity, under which immunity is confined to suits involving the foreign sovereign's public acts, and thus does not extend to cases arising out of its strictly commercial acts. *Verlinden B.V. v. Central Bank of Nigeria,* U.S. N.Y. 1983, 103 S.Ct. 1962, 461 U.S. 480, 76. Further;

b. Petitioners assert lower courts ignore; "Under "restrictive theory" of foreign sovereign immunity substantially codified in the Foreign Sovereign Immunity Act (FSIA), foreign state's immunity from suit in the United States does not extend to acts that are private in nature, such as commercial activities, as opposed to those that are public in nature. *Coleman v. Alcolac, Inc.,* S.D. Tex. 1995, 888 F. Supp. 1388. Further;

c. Petitioners assert lower courts ignore; "Under restrictive Principle theory of foreign sovereign

immunity," immunity of foreign state is restricted to suits involving foreign state's public acts, and does not extend to suits based on its commercial or private acts. *Gregorian v. Izvestia,* C.D. Cal. 1987 658 F. Supp. Affirmed in part, reversed in part on other grounds 871 F.2d1515, certiorari denied 110 S. CT. 237, 493 U.S891, 107 L. Ed. 2d 188. Further;

d. Petitioners assert lower courts ignore; "A foreign state or its agency or an instrumentality thereof is not absolutely immune from suit, but, rather, immunity is restricted to suits involving a foreign state's public acts and does not extend to suits based on its commercial or private acts. *Outboard Marine corp. v. Pezetel,*D.C. Del. 1978, 461 F. Supp 384. Further;

e. Petitioners assert lower courts ignore; "The plurality [504 U.S. 614] stated that the restrictive theory of foreign sovereign immunity would not bar a suit based upon a foreign state's participation in the marketplace in the manner of a private citizen or corporation. 425 U.S. 698-705. A foreign state engaging in "commercial" activities "do[es] not exercise powers peculiar to

sovereigns"; rather, it "exercise[s] only those powers that can also be exercised by private citizens." *Republic of Argentina v. Weltover,* 504 U.S. 607 (1992)." Further;

f. Petitioners assert lower courts ignore; Mr. Chief Justice Marshall who long ago stated in *Bank of the United States v. Planters' Bank of Georgia*, 9 Wheat. 904, 907 (1824):

"It is, we think, a sound principle, that, when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with [425 U.S. 696] whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. Quoted from *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 US 682, 1976. Further;

38. Petitioners assert Congress enacted the FSIA as a result of this case, and the authorities too many to mention, that Congress had to enact the FSIA.

Further; Regarding § 1605(a)(2) H.R.Rep. No. 94-1487, pp. 1, 19, U.S.Code Cong. & Admin.News 1976, pp. 6604, 6618 (1976). Section 18 states that American laws are not given extraterritorial application except with respect to conduct that has, as a "direct and foreseeable result," a "substantial" effect within the United States.

39. Petitioners assert lower courts ignore its own District Court ruling in which clearly reads; "Once basis for jurisdiction is alleged under this chapter, burden of proof rests on foreign state to demonstrate that immunity should be granted". *Tigchon v. Island of Jamaica,* D.C. Michigan 1984, 591 F. Supp. 765. Further;

40. Petitioners assert the lower courts ignore Title 28 U.S.C. § 1330. Actions against foreign states (a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603 (a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title. Further;

41. Petitioners assert the Defendant neither denied being a foreign state involved in private commercial activity nor claimed immunity. Further;

42. Petitioners assert the lower courts ignore the FSIA § 1605. General exceptions to jurisdictional immunity of a foreign state. 1605(a) A foreign state shall not be immune from the jurisdiction of courts of the United States in any case (2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere (4) in which rights in property in the United States acquired by succession or gift or right in immovable property situated in the United States are in issue. Further;

43. The FSIA § 1605 (a) (4) was and is the central issue that was pleaded in original and amended complaints 09-11799 in the district court. This central issue was never addressed by the lower courts, i.e., no debt res as "other property" under Article IV section 3 clause 2; as opposed to Article IV section 3 clause 1, within the United States as an unincorporated association to convert Petitioners U.S.C. 28 § 1330 into U.S.C. 28 § 1331 action. Further;

44. Petitioners assert that the Foreign Sovereign Immunities Act is a public act under the public law merchant and the law of nations. Further;

45. Petitioners assert lower courts also ignore the fact the defendant did not answer pursuant to 28 USC § 1608(d) "In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section". Further;

46. Petitioners assert lower courts ignore the sixth Circuit Court and the Supreme Court where;

"Statute precluding default judgments against foreign states unless claimant established his claim or right to relief by evidence satisfactory to court does not relieve foreign instrumentalities of duty to defend cases or to obey court orders. *Amernational Industries, Inc. v. Action-Tungsram, Inc.* C.A. 6 (Michigan) 1991, 925 F. 2d 970, 111 S. Ct. 2857, 501 U.S. 1233, 115 L. Ed. 2d. Further;

47. Petitioners assert lower courts further ignore; "If an allegedly protected party under this section (1608) simply refuses to appear in a federal court action commenced against it, the party runs the risk of a default judgment, sanctions or both. *Steinberg v. International Criminal Police Organization* D.C.D.C. 1984, 103 F.R.D 392. The Defendant has not answered. Further;

48. Petitioners assert the UNITED STATES DISTRICT COURT FOR THE SIXTH CIRCUIT ratifies the above errors of the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. Further;

49. Petitioners assert that the unincorporated company doing business as the UNITED STATES COURT OF APPEALS FOR THE SIXTH

CIRCUIT is a unincorporated court of private international law and as such has interfered with Petitioners contract rights as protected at Article I section 10 clause 1 of the Constitution of the United States by ratifying the acts and orders of the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN and the Defendant. (for doing business as). See Appendix G. Further;

50. Petitioners assert the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN and UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT do not enjoy authority to deny and moot Petitioners contract rights under Public International Law. Further;
51. Petitioners assert the unincorporated companies doing business as the UNITED STATES DISTRICT COURT and the UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT have denied and made moot Plaintiffs access to the Public Law Merchant. Further;
52. Petitioners assert the above noted UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF MICHIGAN and the UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT do not enjoy authority to deny and make moot Plaintiffs access to the Public Law Merchant. Further;

53. Petitioners assert that Petitioners find no document of creation/establishment mentioning in the exact spelling, case usage and word orientation the entities: UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT and/or UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN other than credit reports concerning private commercial activities. See Appendix D and G. Further;

a. Petitioners assert Title 28 USC § 132 creates, in the exact spelling, case usage and word orientation the entity: United State District Court for the district. See, United States Code Title 28 Chapter 5 Section 132 (a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district. See Appendix D. Further;

b. Petitioners assert Title 28 USC§ 43 creates in the exact spelling, case usage and word orientation the entity: United States Court of Appeals for the circuit. See, United States Code Title 28 Chapter 3 Section 43 (a) There shall be in each circuit a court of appeals, which shall be a court of record, known as the United States Court of Appeals for the circuit. See Appendix D. Further;

c. Petitioners assert the rule of the United States Court of Appeals for the sixth circuit at 6 Cir. R. 201 (a) states; Name. The name of this Court is "United States Court of Appeals for the Sixth Circuit". Further

d. Petitioners assert the following is from *Blacks Law Dictionary* 6th. page 1144.

Personate. To assume the person of another, without his consent or knowledge, in order to deceive others, and, in such feigned character, to fraudulently do same act or gain some advantage, to pass one's self off as another having a certain identity. *Lane v. U.S.* C.C.A. Ohio 17 F 2d 923. Further;

54. Petitioners, because of the above, respectfully petition the Supreme Court of the United State to

issue the Writ of Certiorari to cause the United States Court of Appeals for the Sixth Circuit to cause the District Court for the Eastern District of Michigan to :

A. Perform the courts administrative duties as to the original Defendants default, and
B. Provide all relief including damages sought in amended complaint , Writ of Mandamus, and motions filed, and
C. Order the lower court to produce a document of facts and conclusions of law in regards case No. 09-11799, to protect the Complainants/Petitioners rights, also to settle substantive issues of law brought forward by Complainants/ Petitioners original and amended complaints as so demanded.
D. That in the alternative the court take original Jurisdiction of the case under Article III, section 2, clause 1 and 2.
E. Other relief the court may find just and proper in the premises.

Reasons for granting the Petition

The Defendant and the lower courts diverted Petitioners property rights into a foreign jurisdiction thereby denying Petitioners access to 28 USC 1330 and 28 USC 1602-1608 with its Article III courts of justice.

Conclusion

The Writ of certiorari, because of all the above and the fact we are a nation of laws and not of men, should be granted.

Affidavit in support

We, Gary Van and Susan Barbara Hardy, Petitioners, under the penalties of perjury state the above is true, correct and not misleading to the best of our knowledge and belief and so place our signatures below.

Respectfully,

_____ date: _____ date:

Gary Van Hardy Susan Barbara Hardy

No. 09-2064

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

IN RE: GARY VAN HARDY;)

SUSAN BARBARA HARDY)

Petitioners) ORDER

Before: MOORE, CLAY and KETHLEDGE, Circuit Judges.

The petitioners, Gary Van Hardy and Susan Barbara Hardy, filed a civil complaint in the district court against the Michigan Department of Treasury. The district court dismissed the plaintiff's complaint for lack of subject-matter jurisdiction. Over 30 days later, the petitioners sought mandamus relief before this court, alleging that the district court's dismissal order was erroneous on various grounds.

"The remedy of mandamus is a drastic one to be

invoked only in extraordinary situations where the petitioner can show a clear and undisputable right to the relief sought." *In re Am. President Lines, Ltd.*, 929 F.2d 226, 227 (6th Cir. (1991). A petitioner must also demonstrate that he lacks adequate alternative means to obtain the relief he seeks. *Mallard v. U.S. Dist. Court,* 490 U.S. 296, 309 (1989). Generally, the right to file a direct appeal will adequately safeguard a party's interests. *See In re Ford,* 987 F.2d 334, 342 (6th Cir. 1992). Because the petitioners could have appealed the district court's order dismissing their complaint, they had an adequate alternative remedy to pursue the relief they seek. And because the petitioners did not file their petition within the 30-day period for appealing the district court's order, *see* Fed. R. App. P. 4(a)(1)(A), we cannot treat the mandamus petition as a notice of appeal.

Steele v. Thomas, 488 F.2d 604, 606 (6th Cir. 1973)

The petition for a writ of mandamus is **DENIED.**

ENTERED BY ORDER OF THE

COURT

s/Leonard Green

Clerk

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

GARY and SUSAN HARDY,

Plaintiff, Case number: 09-11799

JUDGE PAUL D.BORMAN

v. UNITED STATES DISTRICT COURT

MICHIGAN DEPARTMENT OF TREASURY

Defendant.

_____/

ORDER OF DISMISSAL

On June 1, 2009, the Court ordered Plaintiffs Gary and Susan Hardy to show cause, within 15 days, that this Court has proper subject matter jurisdiction over the action. (Doc. No. 3.) On June

25, 2009, Plaintiffs filed an untimely response to the Court's order, stating that this Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1330. Plaintiffs also asserted that this Court has jurisdiction over because they made Freedom of Information Act requests.

Plaintiff's response to the order to show cause does not establish subject matter jurisdiction. The jurisdictional statute cited by Plaintiff, 28 U.S.C. § 1330, confers original jurisdiction to the federal courts ober matters between U.S. citizens and foreign states. Plaintiffs do not allege any claims against a foreign state; therefore, 28 U.S.C. § 1330 does not establish subject matter jurisdiction. In addition, the fact that Plaintiffs mae FOIA requests does not bring this matter within the subject matter jurisdiction of this Court. Plaintiffs have not stated

a federal claim, nor is this a diversity action. This Court also notes, on July 6, 2009, Plaintiffs filed an amended complaint. Plaintiff's amended complaint does not state a federal claim, nor do Plaintiffs allege diversity jurisdiction exists. Plaintiffs' amended complaint, therefore, does not establish subject matter jurisdiction.

This Court does not have subject matter jurisdiction in this matter. Pursuant to Fed. R Civ. P. 12 (h)(3), this Court dismisses this action for lack of subject matter jurisdiction.

SO ORDERED

s/PAUL D. BORMAN

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Dated: 7-17-09

Detroit, Michigan

No. 09-2064

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

IN RE: GARY VAN HARDY;)

SUSAN BARBARA HARDY)

Petitioners) ORDER

Before: MOORE, CLAY and KETHLEDGE, Circuit Judges.

The petitioners, Gary Van Hardy and Susan Barbara Hardy, filed a civil complaint in the district court against the Michigan Department of Treasury. The district court dismissed the plaintiff's complaint for lack of subject-matter jurisdiction. Over 30 days later, the petitioners sought mandamus relief before this court, alleging that the district court's dismissal order was erroneous on various grounds. On October 22, 2009, this court denied the petitioner's

mandamus petition.

The petitioners now seek rehearing on the denial of their petition for a writ of mandamus and move for default relief. The petitioners do not dispute that they had an adequate, alternate remedy for pursuing the relief they sought. Rather, they allege that they should be held to a lesser standard because they are proceeding pro se. Pro se litigants; pleadings are held to no less stringent standards if the pleading is sufficient to call for the opportunity to present supporting evidence. *Haines v. Kerner, 404 U.S. 519, 520 (1972).* The petitioners; failure to timely appeal the district court's order, however, deprives this court of jurisdiction. *Baker v. Raulie,* 879, F.2d 1396, 1938 (6th Cir. 1989). We cannot expand or extend the time for appealing the district court's order, notwithstanding the petitioners' pro se status.

The petition for rehearing is **DENIED**. The motion for default relief is **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT

s/Leonard Green

Clerk

Article I, section 10, of the Constitution of the United States;

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill Of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Article III, section 1 of the Constitution of the United States;

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges both of the supreme and inferior Courts, shall hold their Offices during good Behavior and shall at stated

Time, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article III section 2, clause 1 of the Constitution of the United States;

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases of admiralty and maritime Jurisdiction- to Controversies between two or more States;- between a State and Citizens of another state,- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or Citizens thereof, and foreign States, Citizens or Subjects.

Article III section 2, clause 2 of the Constitution of the United States;

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction , both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Article IV section 3 clause 1 of the Constitution of the United States;

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; not any State be formed b the Junction of two or more States; or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Article IV section 3 clause 2 of the Constitution of the United States;

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be construed as to Prejudice any Claims of the United States, or of any particular State.

The first amendment to the Constitution of the United States:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

The fifth amendment to the Constitution of the United States:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a 'grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

United States Code Title 28, part 1, chapter 3 § 43:

§ 43. Creation and composition of courts.

(a) There shall be in each circuit a court of appeals, which shall be a court of record, known as the United States Court of Appeals for the circuit.

(b) Each court of appeals shall consist of the

(c) circuit judges of the circuit in regular active service. The circuit justice and justices or judges designated or assigned shall be competent to sit as judges of the court.

United States Code Title 28, part 1, chapter 5 § 132

§ 132. Creation and composition of courts.

(a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district.

(b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.

(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone

and hold a regular or special session of court at the same time other sessions are held by other judges.

Twenty fourth

CONGRESS OF THE UNITED STATES;

At the second session,

Began and held at City of Washington, on Monday, the fifth day of December, one thousand eight hundred and thirty six.

AN ACT

to admit the State of Michigan into the Union, upon an equal footing with the original States.

Whereas, in pursuance of the Act of Conress, of June the fifteenth, eighteen hundred and thirty six, entitled "An act to establish the northern boundary of the State of Ohio, and to provide for the admission of the State of Michigan into the Union upon the conditions therein expressed", a convention of delegates elected by the people of the said State of Michigan for the sole purpose of giving their assent to the boundaries of the said State of Michigan as described, declared, and established, in and by the said act, did, on the fifteenth of December, eighteen hundred and thirty six, assent to the provisions of

said act___Therefore___

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Michigan, shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever. Section 2. And be further enacted, That the Secretary of the Treasury, in carrying into effect the thirteenth and fourteenth section of the act of the twenty third of June, eighteen hundred and thirty six, entitled "An act to regulate the Deposits of the public money," shall consider the State of Michigan as being one of the United States.

Speaker of the House of Representatives

s/

Vice President of the United States, and

President of the Senate

s/ Martin Van Buren

approved January 26, 1837

s/Andrew Jackson

AFFIDAVIT OF TRUTH

state of Michigan)

ss

county of St. Clair)

I, Gary Van Hardy, hereinafter Affiant, being of the age of reason and having first hand knowledge of the facts below and being aware of the penalties of perjury and falsification according to the laws of the United States of America and the state of Michigan testify that the following facts are true, correct, certain and not misleading to the best of my knowledge and belief, and so state the following:

1) Affiant states, on or about the 5th day of July 2002 this Affiant making his will known to the Department of Health & Human Services did terminate and extinguish any and all agreements/claims/nexus, or by any description connection with said Department, further

2) Affiant further stated Affiants will to terminate and extinguish any and all agreements/claims/nexus, or by any description connection with said Department by Affidavit dated August 09,

2002, further

3) Affiant, states, this affidavit shall serve as notice to the above facts, further
4) Affiant, states, Affiant has made no charitable debt subscription or debt acknowledgement.
5) Further Affiant sayeth naught.

s/Gary Van Hardy date: 02/11/09

Gary Van Hardy

s/Gerald Kotranza

witness

subscribed and sworn to before me

on this 11th day of February 2009

SEAL.

s/ Janet M. Lockwood

Notary Public, county of St. Clair

My commission expires: 3-15-2015

prepared by: Gary Van Hardy

c/o 1399 Braidwood

Memphis, 48041

Michigan

AFFIDAVIT OF TRUTH

state of Michigan)

ss

county of St. Clair)

I, Susan Barbara Hardy, hereinafter Affiant, being of the age of reason and having first hand knowledge of the facts below and being aware of the penalties of perjury and falsification according to the laws of the United States of America and the state of Michigan testify that the following facts are true, correct, certain and not misleading to the best of my knowledge and belief, and so state the following:

1) Affiant states, on or about the 5th day of July 2002 this Affiant making her will known to the Department of Health & Human Services did terminate and extinguish any and all agreements/claims/nexus, or by any description connection with said Department, further

2) Affiant further stated Affiants will to terminate and extinguish any and all agreements/claims/nexus, or by any description connection with said Department by Affidavit dated August 09, 2002, further

3) Affiant, states, this affidavit shall serve as notice to the above facts, further
4) Affiant, states, Affiant has made no charitable gift subscription or debt acknowledgement.
5) Further Affiant sayeth naught.

s/Susan Barbara Hardy date: 3-10-09

Susan Barbara Hardy

s/Gary Van Hardy

witness

s/Amanda Kinseley

witness

subscribed and sworn to before me

on this 10th day of March,

SEAL.

s/Janet M. Lockwood

Notary Public, county of St. Clair

My commission expires:

prepared by: Gary Van Hardy

c/o 1399 Braidwood

Memphis,48041

Michigan

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Company Search Results

Type	Company name	Address
HQ	MICHIGAN STATE OF	500 S CAPITOL AVENUE, LANSING MI.
HQ	STATE, MICHIGAN DEPARTMENT OF	430 W. ALLEGAN LANSING, MI.
BR	EXECUTIVE OFFICE OF THE STATE OF MICHIGAN, also Traded as GOVERNORS OFFICE.	111 S CAPITOL AVE LANSING. MI.
HQ	TREASURY, MICHIGAN DEPARTMENT	430 W ALLEGAN LANSING, MI.

APPENDIX G